

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERADATA CORPORATION, TERADATA
US, INC. and TERADATA OPERATIONS,
INC.,

Plaintiffs,

v.

SAP SE, SA AMERICA, INC., and SAP LABS,
LLC,

Defendants.

No. 2:20-mc-00074-RSM

**DECLARATION OF
BENJAMIN J. BYER IN
SUPPORT OF MICROSOFT
CORPORATION'S RESPONSE
TO PLAINTIFFS' MOTION TO
COMPEL**

I, Benjamin J. Byer, declare as follows:

1. I am a partner with Davis Wright Tremaine LLP, counsel for Microsoft Corporation ("Microsoft") in this action and in connection with the Subpoena to Produce Documents issued by Teradata US, Inc., Teradata Corporation, and Teradata Operations (collectively "Teradata") to Microsoft (the "Subpoena"). I have personal knowledge of the matters referred to in this declaration.

2. On June 19 and 25, 2020, I, along with my colleague David Maas, spoke to Teradata's counsel by telephone to meet and confer about Microsoft's objections to Teradata's document requests within the Subpoena. Teradata's counsel explained that the Subpoena had two sets of requests: one set for Teradata's antitrust claims against SAP SE, SAP America, Inc., and SAP Labs, LLC (collectively "SAP") (Request Nos. 1-9), and the other for Teradata's patent infringement defense (Request Nos. 10-11). For the antitrust requests, Teradata's counsel agreed

1 to identify the relevant versions of the Microsoft products and to limit the date range Teradata
2 originally demanded in the Subpoena, which was from 2011 to the present. Teradata's counsel
3 further explained to me the following with respect to specific requests relevant to Teradata's
4 motion to compel:

5 a. For Request No. 1, Teradata's counsel explained Teradata made this
6 request because it wanted materials sufficient to show how much time and resources Microsoft
7 spent developing the identified products. In subsequent communications, Teradata's counsel
8 agreed not to request product roadmaps or product development plans.

9 b. For Request No. 2, Teradata's counsel explained that this request sought
10 Microsoft's competitive intelligence reports.

11 c. For Request No. 3, Teradata's counsel explained that this request sought
12 Microsoft's win-loss reports.

13 d. For Request Nos. 5 and 7, Teradata explained that the Northern District of
14 California had imposed certain limitations on eDiscovery in its lawsuit with SAP, so Teradata
15 needed to obtain SAP's communications from Microsoft. On multiple other occasions, I asked
16 Teradata's counsel to identify any efforts Teradata made to obtain those communications from
17 SAP. I never received a response from Teradata.

18 3. Attached as **Exhibit 1** is a true and correct copy of an e-mail exchange from
19 July 9, 2020, between myself and Teradata's counsel.

20 4. On July 16, 2020, SAP served its own subpoena on Microsoft. That same day I e-
21 mailed Teradata's counsel regarding SAP's subpoena. Attached as **Exhibit 2** is a true and
22 correct copy of an e-mail exchange from July 16, 2020, between myself and Teradata's counsel.
23 Faced with two, uncoordinated but overlapping subpoenas, I began working with counsel for
24 both Teradata and SAP to locate material responsive to both subpoenas as quickly and efficiently
25 as possible.

26 5. Attached as **Exhibit 3** is a true and correct copy of an e-mail exchange dated
27 July 17, 2020, between myself and Teradata's counsel.

1 6. Attached as **Exhibit 4** is a true and correct copy of an e-mail exchange from
2 July 20, 2020, between myself and Teradata's counsel.

3 7. Throughout this process, I stayed in constant communication with Teradata's
4 counsel, providing status updates, advising counsel of the difficulties caused by COVID-19, and
5 repeatedly asking Teradata's counsel to confirm whether Teradata had any upcoming deadlines.
6 The only deadline Teradata's counsel informed me of was the fact discovery deadline in the
7 underlying litigation of January 15, 2021.

8 8. Attached as **Exhibit 5** is a true and correct copy of an e-mail dated August 7,
9 2020, I sent to Teradata's counsel. Among other things, this email notifies Teradata that
10 Microsoft had available for inspection two and one-half bankers boxes of material available for
11 Teradata's inspection, along with a set of documents produced electronically. Those boxes
12 contain thousands of pages of materials Microsoft collected and produced in response to
13 Contour's patent requests.

14 9. Attached as **Exhibit 6** is a true and correct copy of an e-mail dated August 19,
15 2020, I received from Teradata's counsel.

16 10. Attached as **Exhibit 7** is a true and correct copy of an e-mail dated August 20,
17 2020, I sent to Teradata's counsel.

18 11. Teradata's counsel did not meet and confer with me prior to the filing of
19 Teradata's motion to compel to discuss the issues identified in Teradata's motion. Indeed, they
20 did not respond to the questions I raised in my August 20, 2020 email (Exhibit 7) other than to
21 provide a draft protective order.

22 12. Microsoft will complete its collection of documents in response to Teradata's
23 antitrust requests on September 21, and on September 28 its documents will be available for
24 production once the parties enter an appropriate protective order.

25 13. On September 4, 2020, I spoke to Teradata's counsel, Diana Siri Breaux, and
26 explained that Microsoft is completing its collection of documents responsive to the antitrust
27 requests in the Subpoena, which would be produced once an appropriate protective order was

1 entered. Specifically, I informed Ms. Breaux that Microsoft will be producing, among other
2 things, its competitive intelligence reports in response to Request No. 2, win-loss reports in
3 response to Request No. 3, and a listing of Microsoft's top customers for each product identified
4 by Teradata in response to Request No. 4. I further explained to Ms. Breaux that the parties had
5 not meet and conferred and that this production would likely moot several issues raised in
6 Teradata's motion. I requested Teradata withdraw the motion until Teradata reviewed
7 Microsoft's supplemental document production or the parties had conducted a meet and confer.
8 Teradata refused, but raised no objections to Microsoft's proposed supplemental production.

9 14. Attached as **Exhibit 8** is a true and correct copy of an e-mail exchange from
10 September 9, 2020 between myself and Teradata's counsel.

11 15. Attached as **Exhibit 9** are true and correct copies of exemplary Microsoft's
12 marketing materials publicly available on the internet.

13 16. Teradata has provided no explanation for having waited until May 22 2020, to
14 seek discovery from Microsoft.

15 I declare under penalty of perjury and the laws of the United States that the foregoing is
16 true and correct.

17 Executed on September 14, 2020, in Seattle, Washington.

18 s/ Benjamin J. Byer
19 Benjamin J. Byer

EXHIBIT 1

From: Byer, Ben
Sent: Thursday, July 09, 2020 4:05 PM
To: Kaiser, Mary
Cc: Cross, David D.; Maas, David
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Mary,

When we spoke last you agreed to provide us a list of specific product versions and more limited date range. We're still waiting on that. Once we have that, we'll take another look at the requests and re-evaluate the objections we laid out in our letter and discussed on our calls. Can you please give us a status update? In the meantime, we've completed doc collection on the patent requests and have loaded those documents into our database. We're in the process of doing doc review now and expect to produce in the next few weeks.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Kaiser, Mary
Sent: Thursday, July 9, 2020 9:24 AM
To: Byer, Ben
Cc: Cross, David D. ; Maas, David
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

Following up on my email below, please let us know today when we can expect a response or when you are available to discuss the subpoena response.

Thanks,
Mary

From: Kaiser, Mary <MKaiser@mofo.com>
Date: Friday, Jul 03, 2020, 12:53 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>, Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

We have identified three Microsoft employees who had many communications with SAP during the relevant time period and may potentially have helpful information and/or documents responsive to Teradata's requests. While Microsoft is

responsible for determining the right custodians for these requests since we have limited insight into employee responsibilities there, these look like possible leads.

- Arnie Mondloch - Microsoft's SAP Global Partner Alliance Director
- Todd Kemmerly – Microsoft's SAP Partner Development Manager
- Jeorgen Thomas – Principal Program Manager for SAP on Azure

Can you please let us know when we can expect to hear from you about what Microsoft is prepared to produce in response to the subpoena and when?

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 29, 2020 8:50 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; 'Maas, David' <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on our call last week, Teradata believes that the versions of the Microsoft Named Products that are relevant to Requests 10 and 11 are as follows:

- Microsoft SQL Server 2000
- Microsoft SQL Server 2000 Analysis Services
- Microsoft Commerce Server 2000
- Microsoft Commerce Server 2002

We will follow up with you on the remaining requests this week.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 22, 2020 8:56 AM
To: 'Maas, David' <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi David,

The Thursday time works for us. Look forward to speaking with you then.

Thanks,
Mary

From: Maas, David <DavidMaas@dwt.com>
Sent: Sunday, June 21, 2020 8:33 PM
To: Kaiser, Mary <MKaiser@mofo.com>; Cross, David D. <DCross@mofo.com>

Cc: Byer, Ben <BenByer@dwt.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Mary and David,

Hope you're having a nice weekend. Ben and I are available to continue our meet and confer this coming Thursday (6/25) from 8:30-9:15 a.m. PST or Friday (6/26) from 11:30-12:30 PST. Let us know if either of those times work for you.

Best,

David

David Maas | Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98177

Tel: (206) 757-8184 | Fax: (206) 757-7174

Email: davidmaas@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Byer, Ben <BenByer@dwt.com>

Sent: Tuesday, June 16, 2020 9:54 AM

To: Kaiser, Mary <MKaiser@mofo.com>

Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Mary,

I'm working with David Maas on this, and looking into dates we're both available. I hope to be back to you today.

Thanks,

Ben

Ben Byer | Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98104

Tel: (206) 757-8105 | Fax: (206) 757-7105

Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>

Sent: Tuesday, June 16, 2020 8:20 AM

To: Byer, Ben <BenByer@dwt.com>

Cc: Cross, David D. <DCross@mofo.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call.

Thanks,

Mary

From: Kaiser, Mary
Sent: Friday, June 12, 2020 9:26 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Please let us know your availability for a call to discuss the subpoena and objections on Monday or Tuesday next week.

Thanks,
Mary

From: Merritt, Lisa <LisaMerritt@dwt.com>
Sent: Friday, June 12, 2020 7:22 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Dear Ms. Kaiser,

Attached please find Microsoft's objections to the subpoena served by Teradata in this matter.

Best regards,

Lisa

Lisa Merritt | Davis Wright Tremaine LLP
Executive Legal Assistant to Stuart Dunwoody, Brendan Mangan, Ben Byer and Rachel Herd
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104-1610
Tel: (206) 757-8490 | Fax: (206) 757-7700
Email: lisamerritt@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 2

From: Byer, Ben
Sent: Thursday, July 16, 2020 4:37 PM
To: Kaiser, Mary
Cc: Maas, David; Cross, David D.; Grothouse, David E.
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Mary,

Earlier today SAP served us a subpoena in this matter that at least partially overlaps with your requests. As you can imagine, we cannot run multiple searches for the same information. Your below email compounds the issue by not meaningfully narrowing your subpoena or addressing the issues we raised during our meet and confers. This places us in a tough position. We are now looking at both subpoenas, trying to identify the overlap, and working on a way that we can efficiently respond to both. We'll circle back soon when we have more, but this new subpoena obviously throws a wrench into the works. This does not, however, affect our ongoing efforts on your patent requests, as we don't see overlap there. We are continuing our search for documents responsive to those requests. But because of the age of the material you seek and COVID restrictions, we're having to pull from archives and ship materials for review, which takes some time.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Kaiser, Mary
Sent: Thursday, July 16, 2020 9:08 AM
To: Byer, Ben
Cc: Maas, David ; Cross, David D. ; Grothouse, David E.
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call to discuss any remaining issues with the scope and timing of Microsoft's production.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, July 13, 2020 9:41 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Thank you for the update on the patent requests. As you know, we have already limited our antitrust-related requests (Requests 1-9) to 4 products and their predecessors that were sold during the relevant time frame. For ERP Applications, we believe all relevant product and versions include:

- Microsoft Dynamics 365
- Microsoft Dynamics CRM 2011
- Microsoft Dynamics CRM 2013
- Microsoft Dynamics CRM 2015
- Microsoft Dynamics CRM 2016
- Microsoft Dynamics GP 2010 R2 (11.0 SP2)
- Microsoft Dynamics GP 2013 (12.0)
- Microsoft Dynamics GP 2013 R2 (12.0)
- Microsoft Dynamics GP 2015 (14.0)
- Microsoft Dynamics GP 2015 R2 (14.0)
- Microsoft Dynamics GP 2016 (16.0)
- Microsoft Dynamics GP 2016 R2 (16.0)
- Microsoft Dynamics GP 2018 (18.0)
- Microsoft Dynamics GP 2018 R2 (18.0)
- Microsoft Dynamics GP 2018 (18.2)
- Microsoft Dynamics AX 2012
- Microsoft Dynamics AX 2012 R2
- Microsoft Dynamics AX 2012 R3
- Microsoft Dynamics AX ("AX7")
- Microsoft Dynamics NAV 2013
- Microsoft Dynamics NAV 2013 R2
- Microsoft Dynamics NAV 2015
- Microsoft Dynamics NAV 2016
- Microsoft Dynamics NAV 2017
- Microsoft Dynamics NAV 2018
- Microsoft Dynamics SL 2011
- Microsoft Dynamics SL 2015
- Microsoft Dynamics SL 2018

For EDAW Products, we request information regarding all versions of SQL Server Enterprise Edition, Azure Data Warehouse, and Azure SQL Database that were sold between January 1, 2011 and present.

We need to resolve any remaining disputes over the scope and timing of Microsoft's production this week. Please let us know when you are available for a call.

Thanks,
Mary

From: Byer, Ben <BenByer@dwt.com>
Sent: Thursday, July 9, 2020 7:05 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

When we spoke last you agreed to provide us a list of specific product versions and more limited date range. We're still waiting on that. Once we have that, we'll take another look at the requests and re-evaluate the objections we laid out in our letter and discussed on our calls. Can you please give us a status update? In the meantime, we've completed doc collection on the patent requests and have loaded those documents into our database. We're in the process of doing doc review now and expect to produce in the next few weeks.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98104

Tel: (206) 757-8105 | Fax: (206) 757-7105

Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>

Sent: Thursday, July 9, 2020 9:24 AM

To: Byer, Ben <BenByer@dwt.com>

Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

Following up on my email below, please let us know today when we can expect a response or when you are available to discuss the subpoena response.

Thanks,
Mary

From: Kaiser, Mary <MKaiser@mofo.com>

Date: Friday, Jul 03, 2020, 12:53 PM

To: Byer, Ben <BenByer@dwt.com>

Cc: Cross, David D. <DCross@mofo.com>, Maas, David <DavidMaas@dwt.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

We have identified three Microsoft employees who had many communications with SAP during the relevant time period and may potentially have helpful information and/or documents responsive to Teradata's requests. While Microsoft is responsible for determining the right custodians for these requests since we have limited insight into employee responsibilities there, these look like possible leads.

- Arnie Mondloch - Microsoft's SAP Global Partner Alliance Director
- Todd Kemmerly – Microsoft's SAP Partner Development Manager
- Jeurgen Thomas – Principal Program Manager for SAP on Azure

Can you please let us know when we can expect to hear from you about what Microsoft is prepared to produce in response to the subpoena and when?

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 29, 2020 8:50 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; 'Maas, David' <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on our call last week, Teradata believes that the versions of the Microsoft Named Products that are relevant to Requests 10 and 11 are as follows:

- Microsoft SQL Server 2000
- Microsoft SQL Server 2000 Analysis Services
- Microsoft Commerce Server 2000
- Microsoft Commerce Server 2002

We will follow up with you on the remaining requests this week.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 22, 2020 8:56 AM
To: 'Maas, David' <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi David,

The Thursday time works for us. Look forward to speaking with you then.

Thanks,
Mary

From: Maas, David <DavidMaas@dwt.com>
Sent: Sunday, June 21, 2020 8:33 PM
To: Kaiser, Mary <MKaiser@mofo.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Mary and David,

Hope you're having a nice weekend. Ben and I are available to continue our meet and confer this coming Thursday (6/25) from 8:30-9:15 a.m. PST or Friday (6/26) from 11:30-12:30 PST. Let us know if either of those times work for you.

Best,

David

David Maas | Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98177

Tel: (206) 757-8184 | Fax: (206) 757-7174

Email: davidmaas@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Byer, Ben <BenByer@dwt.com>

Sent: Tuesday, June 16, 2020 9:54 AM

To: Kaiser, Mary <MKaiser@mofo.com>

Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Mary,

I'm working with David Maas on this, and looking into dates we're both available. I hope to be back to you today.

Thanks,

Ben

Ben Byer | Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98104

Tel: (206) 757-8105 | Fax: (206) 757-7105

Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>

Sent: Tuesday, June 16, 2020 8:20 AM

To: Byer, Ben <BenByer@dwt.com>

Cc: Cross, David D. <DCross@mofo.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call.

Thanks,

Mary

From: Kaiser, Mary

Sent: Friday, June 12, 2020 9:26 PM

To: Byer, Ben <BenByer@dwt.com>

Cc: Cross, David D. <DCross@mofo.com>

Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Please let us know your availability for a call to discuss the subpoena and objections on Monday or Tuesday next week.

Thanks,
Mary

From: Merritt, Lisa <LisaMerritt@dwt.com>
Sent: Friday, June 12, 2020 7:22 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Dear Ms. Kaiser,

Attached please find Microsoft's objections to the subpoena served by Teradata in this matter.

Best regards,

Lisa

Lisa Merritt | Davis Wright Tremaine LLP
Executive Legal Assistant to Stuart Dunwoody, Brendan Mangan, Ben Byer and Rachel Herd
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104-1610
Tel: (206) 757-8490 | Fax: (206) 757-7700
Email: lisamerritt@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 3

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Friday, July 17, 2020 8:47 AM
To: Byer, Ben
Cc: Maas, David; Cross, David D.; Grothouse, David E.
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Teradata served its subpoena to Microsoft 8 weeks ago on May 22. SAP's decision to serve a subpoena now does not change or affect Microsoft's obligation to timely produce discovery in response to our long-outstanding subpoena. We have been patient in waiting this long, and in trying to narrow the scope of the requests and provide guidance for the types of documents sought and potential custodians. Microsoft either needs to commit to a reasonable and firm date for production or we will have to seek relief from the court. We remain available for a call to the extent it would be helpful, but need a prompt response regarding the timing of a production.

Thanks,
Mary

Mary Kaiser

Associate | Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW | Washington, DC 20006-1888
P: +1 (202) 887-6952
mofo.com | [LinkedIn](#) | [Twitter](#)

From: Byer, Ben
Sent: Thursday, July 16, 2020 7:37 PM
To: Kaiser, Mary
Cc: Maas, David ; Cross, David D. ; Grothouse, David E.
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

Earlier today SAP served us a subpoena in this matter that at least partially overlaps with your requests. As you can imagine, we cannot run multiple searches for the same information. Your below email compounds the issue by not meaningfully narrowing your subpoena or addressing the issues we raised during our meet and confers. This places us in a tough position. We are now looking at both subpoenas, trying to identify the overlap, and working on a way that we can efficiently respond to both. We'll circle back soon when we have more, but this new subpoena obviously throws a wrench into the works. This does not, however, affect our ongoing efforts on your patent requests, as we don't see overlap there. We are continuing our search for documents responsive to those requests. But because of the age of the material you seek and COVID restrictions, we're having to pull from archives and ship materials for review, which takes some time.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Thursday, July 16, 2020 9:08 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call to discuss any remaining issues with the scope and timing of Microsoft's production.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, July 13, 2020 9:41 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Thank you for the update on the patent requests. As you know, we have already limited our antitrust-related requests (Requests 1-9) to 4 products and their predecessors that were sold during the relevant time frame. For ERP Applications, we believe all relevant product and versions include:

- Microsoft Dynamics 365
- Microsoft Dynamics CRM 2011
- Microsoft Dynamics CRM 2013
- Microsoft Dynamics CRM 2015
- Microsoft Dynamics CRM 2016
- Microsoft Dynamics GP 2010 R2 (11.0 SP2)
- Microsoft Dynamics GP 2013 (12.0)
- Microsoft Dynamics GP 2013 R2 (12.0)
- Microsoft Dynamics GP 2015 (14.0)
- Microsoft Dynamics GP 2015 R2 (14.0)
- Microsoft Dynamics GP 2016 (16.0)
- Microsoft Dynamics GP 2016 R2 (16.0)
- Microsoft Dynamics GP 2018 (18.0)
- Microsoft Dynamics GP 2018 R2 (18.0)
- Microsoft Dynamics GP 2018 (18.2)

- Microsoft Dynamics AX 2012
- Microsoft Dynamics AX 2012 R2
- Microsoft Dynamics AX 2012 R3
- Microsoft Dynamics AX ("AX7")
- Microsoft Dynamics NAV 2013
- Microsoft Dynamics NAV 2013 R2
- Microsoft Dynamics NAV 2015
- Microsoft Dynamics NAV 2016
- Microsoft Dynamics NAV 2017
- Microsoft Dynamics NAV 2018
- Microsoft Dynamics SL 2011
- Microsoft Dynamics SL 2015
- Microsoft Dynamics SL 2018

For EDAW Products, we request information regarding all versions of SQL Server Enterprise Edition, Azure Data Warehouse, and Azure SQL Database that were sold between January 1, 2011 and present.

We need to resolve any remaining disputes over the scope and timing of Microsoft's production this week. Please let us know when you are available for a call.

Thanks,
Mary

From: Byer, Ben <BenByer@dwt.com>
Sent: Thursday, July 9, 2020 7:05 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

When we spoke last you agreed to provide us a list of specific product versions and more limited date range. We're still waiting on that. Once we have that, we'll take another look at the requests and re-evaluate the objections we laid out in our letter and discussed on our calls. Can you please give us a status update? In the meantime, we've completed doc collection on the patent requests and have loaded those documents into our database. We're in the process of doing doc review now and expect to produce in the next few weeks.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Thursday, July 9, 2020 9:24 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

Following up on my email below, please let us know today when we can expect a response or when you are available to discuss the subpoena response.

Thanks,
Mary

From: Kaiser, Mary <MKaiser@mofo.com>
Date: Friday, Jul 03, 2020, 12:53 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>, Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

We have identified three Microsoft employees who had many communications with SAP during the relevant time period and may potentially have helpful information and/or documents responsive to Teradata's requests. While Microsoft is responsible for determining the right custodians for these requests since we have limited insight into employee responsibilities there, these look like possible leads.

- Arnie Mondloch - Microsoft's SAP Global Partner Alliance Director
- Todd Kemmerly – Microsoft's SAP Partner Development Manager
- Jeurgen Thomas – Principal Program Manager for SAP on Azure

Can you please let us know when we can expect to hear from you about what Microsoft is prepared to produce in response to the subpoena and when?

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 29, 2020 8:50 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; 'Maas, David' <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on our call last week, Teradata believes that the versions of the Microsoft Named Products that are relevant to Requests 10 and 11 are as follows:

- Microsoft SQL Server 2000
- Microsoft SQL Server 2000 Analysis Services
- Microsoft Commerce Server 2000
- Microsoft Commerce Server 2002

We will follow up with you on the remaining requests this week.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 22, 2020 8:56 AM
To: 'Maas, David' <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi David,

The Thursday time works for us. Look forward to speaking with you then.

Thanks,
Mary

From: Maas, David <DavidMaas@dwt.com>
Sent: Sunday, June 21, 2020 8:33 PM
To: Kaiser, Mary <MKaiser@mofo.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Mary and David,

Hope you're having a nice weekend. Ben and I are available to continue our meet and confer this coming Thursday (6/25) from 8:30-9:15 a.m. PST or Friday (6/26) from 11:30-12:30 PST. Let us know if either of those times work for you.

Best,

David

David Maas | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98177
Tel: (206) 757-8184 | Fax: (206) 757-7174
Email: davidmaas@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Byer, Ben <BenByer@dwt.com>
Sent: Tuesday, June 16, 2020 9:54 AM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Mary,

I'm working with David Maas on this, and looking into dates we're both available. I hope to be back to you today.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Tuesday, June 16, 2020 8:20 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call.

Thanks,
Mary

From: Kaiser, Mary
Sent: Friday, June 12, 2020 9:26 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Please let us know your availability for a call to discuss the subpoena and objections on Monday or Tuesday next week.

Thanks,
Mary

From: Merritt, Lisa <LisaMerritt@dwt.com>
Sent: Friday, June 12, 2020 7:22 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Dear Ms. Kaiser,

Attached please find Microsoft's objections to the subpoena served by Teradata in this matter.

Best regards,

Lisa

Lisa Merritt | Davis Wright Tremaine LLP

Executive Legal Assistant to Stuart Dunwoody, Brendan Mangan, Ben Byer and Rachel Herd

920 Fifth Avenue, Suite 3300 | Seattle, WA 98104-1610

Tel: (206) 757-8490 | Fax: (206) 757-7700

Email: lisamerritt@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 4

From: Cross, David D. <DCross@mofo.com>
Sent: Monday, July 20, 2020 5:59 PM
To: Byer, Ben; Kaiser, Mary
Cc: Maas, David; Grothouse, David E.
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben –

While we appreciate that a plan is forthcoming, the timing is problematic. Two more weeks even to get a proposed plan from you will have us approaching three months since we served the subpoena, and without any documents produced. To answer your question, the timing issue you're missing, respectfully, is that – as Mary noted – this subpoena and the discovery we're seeking is just one part of a broader discovery strategy that will be informed and guided in part by the discovery we receive from you as a major player in the industry. We served the subpoena when we did – well before the close of fact discovery – for that very reason. We've been patient in trying to negotiate an agreeable scope and to try to avoid involving the Court, but unfortunately we're running out of time for that. I don't see why you'd need another two weeks simply to send us a plan for what you will produce and when. If you can't send us that by the end of this week, then regrettably we'll need to get help from the Court. We especially can't afford to lose two more weeks only to find that we're at impasse on important categories of discovery and/or on timing for completing production. If we can't agree on the plan, then we should determine that now so we can promptly obtain help from the Court.

Regarding SAP's subpoena, we of course appreciate the burden your client bears in this litigation as a third party, which is why we've spent the last couple months trying to reach agreement with you on scope and timing for production. Hopefully you can appreciate the unfairness and prejudice our client would suffer if those efforts were to suddenly get delayed or derailed simply because SAP chose to serve its own subpoena well after we served ours. The way I've handled such situations in the past was to complete negotiations with the first party to serve the subpoena, for which the other party will receive the same documents, and then to separately negotiate with the other party any additional narrow discovery that would be necessary and appropriate. I don't see why this approach wouldn't work here. In any event, SAP's subpoena doesn't change your client's obligations to timely produce documents responsive to our subpoena, and we need to complete that relatively soon—ideally without involving the Court.

We remain available to discuss any of these issues as needed and to try to reach agreement on the path forward.

Thanks very much.
DC

From: Byer, Ben
Sent: Monday, July 20, 2020 8:41 PM
To: Kaiser, Mary
Cc: Maas, David ; Cross, David D. ; Grothouse, David E.
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

Thanks for explaining. We're in the process of investigating how we can efficiently locate documents in response to both subpoenas. We expect to have a plan within two weeks and will be back in touch with both parties with a proposal. Given that the only deadline you identified comes in 2021, we don't see any harm this efficient plan would

cause Teradata. Conversely, forcing Microsoft to run multiple, overlapping searches just weeks apart would needlessly impose undue burden on a non-party. Please let me know if you see some timing issue I am missing here.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Monday, July 20, 2020 12:59 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

The deadline for fact discovery is January 15, 2021. However, this does not affect Microsoft's obligation to timely produce documents in response to a subpoena that has been pending for two months. Given Microsoft's significance in the industry at issue, we need its documents to help inform other discovery efforts in the case. We, therefore, need a complete production from Microsoft well before the end of fact discovery, hence the timing of the subpoena. Please let us know whether Microsoft will commit to a reasonable and firm date for production. Otherwise, as we have said, we will have to seek relief from the court.

Thanks,
Mary

From: Byer, Ben <BenByer@dwt.com>
Sent: Friday, July 17, 2020 7:11 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

The parties' failure to coordinate third-party discovery does not create a requirement for Microsoft to run multiple searches for the same material simply because one party fired off its subpoena a few weeks before the other. Nonetheless, I understand you'd prefer information sooner rather than later. Additional background here would help. When does discovery close and what upcoming deadlines do you have?

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Friday, July 17, 2020 8:47 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Teradata served its subpoena to Microsoft 8 weeks ago on May 22. SAP's decision to serve a subpoena now does not change or affect Microsoft's obligation to timely produce discovery in response to our long-outstanding subpoena. We have been patient in waiting this long, and in trying to narrow the scope of the requests and provide guidance for the types of documents sought and potential custodians. Microsoft either needs to commit to a reasonable and firm date for production or we will have to seek relief from the court. We remain available for a call to the extent it would be helpful, but need a prompt response regarding the timing of a production.

Thanks,
Mary

Mary Kaiser
Associate | Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW | Washington, DC 20006-1888
P: +1 (202) 887-6952
mofo.com | [LinkedIn](#) | [Twitter](#)

From: Byer, Ben <BenByer@dwt.com>
Sent: Thursday, July 16, 2020 7:37 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

Earlier today SAP served us a subpoena in this matter that at least partially overlaps with your requests. As you can imagine, we cannot run multiple searches for the same information. Your below email compounds the issue by not meaningfully narrowing your subpoena or addressing the issues we raised during our meet and confers. This places us in a tough position. We are now looking at both subpoenas, trying to identify the overlap, and working on a way that we can efficiently respond to both. We'll circle back soon when we have more, but this new subpoena obviously throws a wrench into the works. This does not, however, affect our ongoing efforts on your patent requests, as we don't see

overlap there. We are continuing our search for documents responsive to those requests. But because of the age of the material you seek and COVID restrictions, we're having to pull from archives and ship materials for review, which takes some time.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Thursday, July 16, 2020 9:08 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call to discuss any remaining issues with the scope and timing of Microsoft's production.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, July 13, 2020 9:41 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Thank you for the update on the patent requests. As you know, we have already limited our antitrust-related requests (Requests 1-9) to 4 products and their predecessors that were sold during the relevant time frame. For ERP Applications, we believe all relevant product and versions include:

- Microsoft Dynamics 365
- Microsoft Dynamics CRM 2011
- Microsoft Dynamics CRM 2013
- Microsoft Dynamics CRM 2015
- Microsoft Dynamics CRM 2016
- Microsoft Dynamics GP 2010 R2 (11.0 SP2)
- Microsoft Dynamics GP 2013 (12.0)
- Microsoft Dynamics GP 2013 R2 (12.0)
- Microsoft Dynamics GP 2015 (14.0)

- Microsoft Dynamics GP 2015 R2 (14.0)
- Microsoft Dynamics GP 2016 (16.0)
- Microsoft Dynamics GP 2016 R2 (16.0)
- Microsoft Dynamics GP 2018 (18.0)
- Microsoft Dynamics GP 2018 R2 (18.0)
- Microsoft Dynamics GP 2018 (18.2)
- Microsoft Dynamics AX 2012
- Microsoft Dynamics AX 2012 R2
- Microsoft Dynamics AX 2012 R3
- Microsoft Dynamics AX ("AX7")
- Microsoft Dynamics NAV 2013
- Microsoft Dynamics NAV 2013 R2
- Microsoft Dynamics NAV 2015
- Microsoft Dynamics NAV 2016
- Microsoft Dynamics NAV 2017
- Microsoft Dynamics NAV 2018
- Microsoft Dynamics SL 2011
- Microsoft Dynamics SL 2015
- Microsoft Dynamics SL 2018

For EDAW Products, we request information regarding all versions of SQL Server Enterprise Edition, Azure Data Warehouse, and Azure SQL Database that were sold between January 1, 2011 and present.

We need to resolve any remaining disputes over the scope and timing of Microsoft's production this week. Please let us know when you are available for a call.

Thanks,
Mary

From: Byer, Ben <BenByer@dwt.com>
Sent: Thursday, July 9, 2020 7:05 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Hi Mary,

When we spoke last you agreed to provide us a list of specific product versions and more limited date range. We're still waiting on that. Once we have that, we'll take another look at the requests and re-evaluate the objections we laid out in our letter and discussed on our calls. Can you please give us a status update? In the meantime, we've completed doc collection on the patent requests and have loaded those documents into our database. We're in the process of doing doc review now and expect to produce in the next few weeks.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104

Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Thursday, July 9, 2020 9:24 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

Following up on my email below, please let us know today when we can expect a response or when you are available to discuss the subpoena response.

Thanks,
Mary

From: Kaiser, Mary <MKaiser@mofo.com>
Date: Friday, Jul 03, 2020, 12:53 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Ben,

We have identified three Microsoft employees who had many communications with SAP during the relevant time period and may potentially have helpful information and/or documents responsive to Teradata's requests. While Microsoft is responsible for determining the right custodians for these requests since we have limited insight into employee responsibilities there, these look like possible leads.

- Arnie Mondloch - Microsoft's SAP Global Partner Alliance Director
- Todd Kemmerly – Microsoft's SAP Partner Development Manager
- Jeurgen Thomas – Principal Program Manager for SAP on Azure

Can you please let us know when we can expect to hear from you about what Microsoft is prepared to produce in response to the subpoena and when?

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 29, 2020 8:50 AM
To: 'Byer, Ben' <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>; 'Maas, David' <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on our call last week, Teradata believes that the versions of the Microsoft Named Products that are relevant to Requests 10 and 11 are as follows:

- Microsoft SQL Server 2000
- Microsoft SQL Server 2000 Analysis Services
- Microsoft Commerce Server 2000
- Microsoft Commerce Server 2002

We will follow up with you on the remaining requests this week.

Thanks,
Mary

From: Kaiser, Mary
Sent: Monday, June 22, 2020 8:56 AM
To: 'Maas, David' <DavidMaas@dwt.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi David,

The Thursday time works for us. Look forward to speaking with you then.

Thanks,
Mary

From: Maas, David <DavidMaas@dwt.com>
Sent: Sunday, June 21, 2020 8:33 PM
To: Kaiser, Mary <MKaiser@mofo.com>; Cross, David D. <DCross@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Mary and David,

Hope you're having a nice weekend. Ben and I are available to continue our meet and confer this coming Thursday (6/25) from 8:30-9:15 a.m. PST or Friday (6/26) from 11:30-12:30 PST. Let us know if either of those times work for you.

Best,

David

David Maas | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98177
Tel: (206) 757-8184 | Fax: (206) 757-7174
Email: davidmaas@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Byer, Ben <BenByer@dwt.com>
Sent: Tuesday, June 16, 2020 9:54 AM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Cross, David D. <DCross@mofo.com>; Maas, David <DavidMaas@dwt.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Mary,

I'm working with David Maas on this, and looking into dates we're both available. I hope to be back to you today.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Kaiser, Mary <MKaiser@mofo.com>
Sent: Tuesday, June 16, 2020 8:20 AM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Following up on my email below, please let us know when you are available for a call.

Thanks,
Mary

From: Kaiser, Mary
Sent: Friday, June 12, 2020 9:26 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Cross, David D. <DCross@mofo.com>
Subject: RE: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

Hi Ben,

Please let us know your availability for a call to discuss the subpoena and objections on Monday or Tuesday next week.

Thanks,
Mary

From: Merritt, Lisa <LisaMerritt@dwt.com>
Sent: Friday, June 12, 2020 7:22 PM
To: Kaiser, Mary <MKaiser@mofo.com>
Cc: Byer, Ben <BenByer@dwt.com>
Subject: Teradata Corp., et al. v. SAP, et. al., No. 3:18-cv-3670-WHO (N.D. Cal.)

- External Email -

Dear Ms. Kaiser,

Attached please find Microsoft's objections to the subpoena served by Teradata in this matter.

Best regards,

Lisa

Lisa Merritt | Davis Wright Tremaine LLP
Executive Legal Assistant to Stuart Dunwoody, Brendan Mangan, Ben Byer and Rachel Herd
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104-1610
Tel: (206) 757-8490 | Fax: (206) 757-7700
Email: lisamerritt@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 5

From: Byer, Ben
Sent: Friday, August 07, 2020 5:10 PM
To: Kaiser, Mary; Cross, David D.
Cc: Maas, David
Subject: Teradata subpoena to Microsoft - Update

David and Mary,

A few updates on Microsoft's response to the subpoena. We have identified both electronic and physical documents we're ready to produce in response to requests 10-11. The electronic documents are being processed by our vendor now and will be ready in the next couple days. Given the age of the material those requests seek, much of what we have located exists only in hardcopy. We have located about two and half banker's boxes of books. Those are available for your inspection at DWT's Seattle office. Alternatively, please let us know if you'd prefer we process and produce (at Teradata's expense) this material electronically.

With respect to the antitrust requests, you still have not responded to our questions regarding any efforts to obtain material from SAP. We therefore cannot agree to search for and produce documents in response to requests 5-9. We're continuing to interview individuals in the business unit to identify what we can reasonably locate and produce in response to requests 1-4, and are working hard and juggling summary vacations. We're hoping to have that pinned down next week. But before we can produce anything there, we will need to amend the protective order to add a category for an outside counsel only designation. In the interest of time, can you please provide a proposed amendment to the protective order for our review? Getting this in place now will help speed any production.

Thanks,
Ben

Ben Byer | Davis Wright Tremain LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

EXHIBIT 6

From: Cross, David D. <DCross@mofo.com>
Sent: Wednesday, August 19, 2020 7:55 AM
To: Byer, Ben; Kaiser, Mary
Cc: Maas, David; Grothouse, David E.
Subject: RE: Teradata subpoena to Microsoft - Update

Ben –

I just found this email in my spam box. Please include Dave Grothouse on all communications. Mary is out on maternity leave and has been for a while.

For the boxes you offered for inspection, please produce copies electronically given the health risks with us sending someone to your office to inspect them and given today's travel restrictions. Please let us know when we can expect these.

To your last paragraph, we've responded to all your questions. Claiming otherwise is neither true nor productive. Moreover, as we've explained many times, Requests 5-9 are not limited to materials that SAP has. They include highly relevant materials that only Microsoft has, such as internal Microsoft communications and communications with its customers. In any event, as I believe we discussed before, we're willing to table Requests 6 and 8, and we're willing to limit Request 5 to communications regarding SAP's restrictive licensing practices for S/4HANA and HANA. Regarding the protective order, this is the first I recall you raising any concern with that order. Nevertheless, we're fine with an outside-counsel-only designation for appropriately confidential documents and will treat any such documents accordingly until—and of course after—an amended protective order is entered.

We've patiently tried for three months to work out an agreement with you regarding the subpoena. You promised a plan a month ago but have provided none. We're at the point where we need to seek help from the Court.

Best,
DC

From: Byer, Ben
Sent: Friday, August 7, 2020 8:10 PM
To: Kaiser, Mary ; Cross, David D.
Cc: Maas, David
Subject: Teradata subpoena to Microsoft - Update

External Email

David and Mary,

A few updates on Microsoft's response to the subpoena. We have identified both electronic and physical documents we're ready to produce in response to requests 10-11. The electronic documents are being processed by our vender now and will be ready in the next couple days. Given the age of the material those requests seek, much of what we have located exists only in hardcopy. We have located about two and half banker's boxes of books. Those are available

for your inspection at DWT's Seattle office. Alternatively, please let us know if you'd prefer we process and produce (at Teradata's expense) this material electronically.

With respect to the antitrust requests, you still have not responded to our questions regarding any efforts to obtain material from SAP. We therefore cannot agree to search for and produce documents in response to requests 5-9. We're continuing to interview individuals in the business unit to identify what we can reasonably locate and produce in response to requests 1-4, and are working hard and juggling summary vacations. We're hoping to have that pinned down next week. But before we can produce anything there, we will need to amend the protective order to add a category for an outside counsel only designation. In the interest of time, can you please provide a proposed amendment to the protective order for our review? Getting this in place now will help speed any production.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 7

From: Byer, Ben
Sent: Thursday, August 20, 2020 3:00 PM
To: Cross, David D.; Kaiser, Mary
Cc: Maas, David; Grothouse, David E.
Subject: RE: Teradata subpoena to Microsoft - Update

David,

Thank you for agreeing to withdraw requests 6 and 8. This leaves requests 5 and 9. We appreciate that you've limited request 5 to "restrictive licensing practices for S/4HANA and HANA" but the request seeks "Documents comprising or relating to any communication between Microsoft and SAP." Regardless of subject, communications with SAP should be available from SAP. If they are not, please explain. Similarly, request 9 seeks documents showing "the existence of any restriction or prohibitions imposed by SAP." Restrictions and prohibitions imposed by SAP are available from SAP. If they are not, please explain.

On the other requests, we have produced responsive materials to you, been diligently researching whether and what we have in terms of additional responsive materials to the overlapping requests from Teradata and SAP, and provided you a plan forward two weeks ago—which you claim to have just found in your "spam box." Our actions and emails speak for themselves so I am not going to respond to your mischaracterization of the record and will instead focus on next steps. Please provide a proposed amended protective order and we'll review and comment. Please also confirm you will reimburse us for the time and expense of scanning the hardcopy material, and we'll begin that process. We continue to interview Microsoft employees who are searching for additional documents. We will circle back as soon as they've completed searching. In the meantime, please let us know if you have any imminent case deadlines.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Cross, David D.
Sent: Wednesday, August 19, 2020 7:55 AM
To: Byer, Ben ; Kaiser, Mary
Cc: Maas, David ; Grothouse, David E.
Subject: RE: Teradata subpoena to Microsoft - Update

Ben –

I just found this email in my spam box. Please include Dave Grothouse on all communications. Mary is out on maternity leave and has been for a while.

For the boxes you offered for inspection, please produce copies electronically given the health risks with us sending someone to your office to inspect them and given today's travel restrictions. Please let us know when we can expect these.

To your last paragraph, we've responded to all your questions. Claiming otherwise is neither true nor productive. Moreover, as we've explained many times, Requests 5-9 are not limited to materials that SAP has. They include highly relevant materials that only Microsoft has, such as internal Microsoft communications and communications with its customers. In any event, as I believe we discussed before, we're willing to table Requests 6 and 8, and we're willing to limit Request 5 to communications regarding SAP's restrictive licensing practices for S/4HANA and HANA. Regarding the protective order, this is the first I recall you raising any concern with that order. Nevertheless, we're fine with an outside-counsel-only designation for appropriately confidential documents and will treat any such documents accordingly until—and of course after—an amended protective order is entered.

We've patiently tried for three months to work out an agreement with you regarding the subpoena. You promised a plan a month ago but have provided none. We're at the point where we need to seek help from the Court.

Best,
DC

From: Byer, Ben <BenByer@dwt.com>
Sent: Friday, August 7, 2020 8:10 PM
To: Kaiser, Mary <MKaiser@mofo.com>; Cross, David D. <DCross@mofo.com>
Cc: Maas, David <DavidMaas@dwt.com>
Subject: Teradata subpoena to Microsoft - Update

External Email

David and Mary,

A few updates on Microsoft's response to the subpoena. We have identified both electronic and physical documents we're ready to produce in response to requests 10-11. The electronic documents are being processed by our vendor now and will be ready in the next couple days. Given the age of the material those requests seek, much of what we have located exists only in hardcopy. We have located about two and half banker's boxes of books. Those are available for your inspection at DWT's Seattle office. Alternatively, please let us know if you'd prefer we process and produce (at Teradata's expense) this material electronically.

With respect to the antitrust requests, you still have not responded to our questions regarding any efforts to obtain material from SAP. We therefore cannot agree to search for and produce documents in response to requests 5-9. We're continuing to interview individuals in the business unit to identify what we can reasonably locate and produce in response to requests 1-4, and are working hard and juggling summary vacations. We're hoping to have that pinned down next week. But before we can produce anything there, we will need to amend the protective order to add a category for an outside counsel only designation. In the interest of time, can you please provide a proposed amendment to the protective order for our review? Getting this in place now will help speed any production.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
 920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
 Tel: (206) 757-8105 | Fax: (206) 757-7105
 Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 8

From: Byer, Ben
Sent: Wednesday, September 09, 2020 9:56 PM
To: Cross, David D.
Cc: Maas, David; Diana Siri Breau; Grothouse, David E.
Subject: RE: Teradata subpoena to Microsoft - Update

David,

As I explained on August 7, this was hardcopy material not available in electronic form. Our previous offer still stands—we'll scan and send you an electronic copy so long as you'll agree to cover the expense of doing so.

Thanks,
Ben

Ben Byer | Davis Wright Tremain LLP

920 Fifth Avenue, Suite 3300 | Seattle, WA 98104

Tel: (206) 757-8105 | Fax: (206) 757-7105

Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

From: Cross, David D. <DCross@mofo.com>
Sent: Tuesday, September 8, 2020 7:16 PM
To: Byer, Ben <BenByer@dwt.com>
Cc: Maas, David <DavidMaas@dwt.com>; Diana Siri Breau <dianab@SummitLaw.com>; Grothouse, David E. <DGrothouse@mofo.com>
Subject: RE: Teradata subpoena to Microsoft - Update

Ben –

Why haven't you produced to us copies of the 2.5 boxes you mentioned below a month ago as I requested on August 19? I never saw a response to that email. As I explained, it's not reasonable to insist on inspection at your offices given the pandemic, and it's not a small volume of boxes. Can you please produce copies by the end of this week?

I understand you and Diana have discussed other aspects of your production. For this email, I'm just focusing on this one issue since it seems simple to resolve.

Thanks,
DC

From: Byer, Ben <BenByer@dwt.com>
Sent: Friday, August 7, 2020 8:10 PM
To: Kaiser, Mary <MKaiser@mofo.com>; Cross, David D. <DCross@mofo.com>
Cc: Maas, David <DavidMaas@dwt.com>
Subject: Teradata subpoena to Microsoft - Update

External Email

David and Mary,

A few updates on Microsoft's response to the subpoena. We have identified both electronic and physical documents we're ready to produce in response to requests 10-11. The electronic documents are being processed by our vendor now and will be ready in the next couple days. Given the age of the material those requests seek, much of what we have located exists only in hardcopy. We have located about two and half banker's boxes of books. Those are available for your inspection at DWT's Seattle office. Alternatively, please let us know if you'd prefer we process and produce (at Teradata's expense) this material electronically.

With respect to the antitrust requests, you still have not responded to our questions regarding any efforts to obtain material from SAP. We therefore cannot agree to search for and produce documents in response to requests 5-9. We're continuing to interview individuals in the business unit to identify what we can reasonably locate and produce in response to requests 1-4, and are working hard and juggling summary vacations. We're hoping to have that pinned down next week. But before we can produce anything there, we will need to amend the protective order to add a category for an outside counsel only designation. In the interest of time, can you please provide a proposed amendment to the protective order for our review? Getting this in place now will help speed any production.

Thanks,
Ben

Ben Byer | Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300 | Seattle, WA 98104
Tel: (206) 757-8105 | Fax: (206) 757-7105
Email: benbyer@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Washington, D.C.

=====

This message may be confidential and privileged. Use or disclosure by anyone other than an intended addressee is prohibited. If you received this message in error, please delete it and advise the sender by reply email. Learn about Morrison & Foerster LLP's [Privacy Policy](#).

EXHIBIT 9

Reimagine productivity with Microsoft Dynamics 365

Transform business process automation and people productivity
with Microsoft Dynamics 365 and the Microsoft Cloud



